

THE HONORABLE STANLEY A. BASTIAN

William D. Pickett, WSBA #27867
LARSON | GRIFFEE | PICKETT, PLLC
105 N. Third Street
Yakima, Washington 98901
Tel: 509-972-1825
bill@lgplawfirm.com
Attorney for Plaintiff

Luan T. Le, *pro hac vice*
LAW OFFICES OF LUAN T. LE
1190 S. Bascom Ave, Suite 213
San Jose, CA 95128
Tel: 408-247-4715
Email: ledowningllp@gmail.com
Co-counsel for Plaintiff

Seth W. Wiener, *pro hac vice*
LAW OFFICES OF SETH W. WIENER
609 Karina Court
San Ramon, CA 94582
Tel: 925-487-5607
Email: seth@sethwienerlaw.com
Co-counsel for Plaintiff

Catharine Morisset, WSBA #29682
Suzanne Michael, WSBA #14072
Clarence Belnavis, WSBA #36681
cmorisset@fisherphillips.com
smichael@fisherphillips.com
cbelnavis@fisherphillips.com

FISHER PHILLIPS LLP
1700 7th Avenue, Suite 2200
Seattle, WA 98101
Tel: 206-682-2308
Attorneys for Defendant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

DEMETRIOS VORGIAS,

Plaintiff,

vs.

COMMUNITY HEALTH OF
CENTRAL WASHINGTON,

Defendant.

NO. 1:21-cv-03013-SAB

JOINT PRETRIAL ORDER
[PROPOSED]

A pretrial conference was held in the above-entitled cause on August 31, 2022 with Judge Stanley A. Bastian presiding. Plaintiff was represented by Bill Pickett of Larson Griffie & Pickett, PLLC, and defendant by Catharine Morisset and Clarence Belnavis of Fisher & Phillips, LLP, their respective attorneys of record. The following pretrial order has been formulated and settled as follows:

I. NATURE OF PROCEEDINGS AND STATEMENT OF JURISDICTION

The following facts are agreed upon by the parties and require no proof:

1. This Court has subject matter jurisdiction under 28 U.S.C. § § 1331, 1332 (a)(1), and 1367.

2. Plaintiff Demetrious Vorgias (“Plaintiff”) filed a lawsuit against Defendant Community Health of Central Washington in United States District Court in the Eastern District of Washington, Yakima, on February 2, 2021.

1 3. The Complaint alleged three causes of action: “Violation of the
2 Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.,” “Violation of the
3 Washington Law Against Discrimination,” and “Breach of Contract.” ECF No. 1
4 at 4.

5 4. On March 28, 2018, Plaintiff signed a first year Resident Contract in
6 Family Medicine with Defendant.

7 5. The term of the contract was June 25, 2018, through June 24, 2019.

8 6. The residency contract could be terminated by either Plaintiff or
9 Defendant upon 30 days’ written notice.

10 7. Plaintiff was employed by Defendant from June 25, 2018 and May
11 1, 2019.

12 **II. PLAINTIFF’S CONTENTIONS**

13 Plaintiff’s contentions as to disputed issues are as follows:

14 1. Defendant knew that Plaintiff suffered from mental
15 Disabilities/impairments, including, (Attention Deficit Hyperactivity Disorder
16 “ADHD” and Generalized Anxiety Disorder “GAD”).

17 2. Defendant knew that Plaintiff’s impairments necessitated
18 reasonable work place accommodations.

19 3. Defendant required Plaintiff undergo medical examination to
20

1 determine the extent of impairments/disabilities, and which reasonable
2 accommodations that would assist plaintiff to succeed in Defendant's residency
3 program.

4 4. Defendant failed to follow its own formal remedial procedures
5 regarding the termination of Plaintiff's employment from the Community Health
6 of Central Washington Residency program.

7 5. Defendant failed to engage in the interactive process regarding
8 reasonable accommodation for Plaintiff.

9 6. Defendant prematurely and improperly terminated Plaintiff
10 despite the availability of reasonable accommodations to address disabilities
11 and/or impairments.

12 7. Defendant retaliated against Plaintiff as a result of his
13 participation to seek reasonable workplace accommodations for
14 disabilities/impairments.

15 8. Plaintiff's reasonable work place accommodations did not create
16 an undue burden for Defendant.

17 9. Plaintiff took reasonable steps to mitigate the harm caused by
18 Defendant's discriminatory actions.

19 **III. DEFENDANT'S CONTENTIONS**

20 Defendant's contentions as to disputed issues are as follows:

1 1. Plaintiff graduated from medical school in 2016.

2 2. Medical residents are placed into residency programs through a
3 matching process run by the National Resident Matching Program (NRMP).

4 3. Briefly, each applicant ranks the residency programs in the order of
5 their preference, and each residency program does the same with applicants.
6 NRMP then matches the applicants to the residency programs using an algorithm.

7 4. In 2016, Plaintiff participated in the match process but was not
8 selected by any residency program as a match.

9 5. In 2017, Plaintiff participated in the match process but was not
10 selected by any residency program as a match.

11 6. In 2018, Plaintiff participated in the match process and matched with
12 CHCW.

13 7. Plaintiff's Resident Contract provided that extended personal leave
14 could be granted at the discretion of the Program Director for compelling personal
15 reasons.

16 8. Plaintiff never requested extended personal leave during his
17 employment with Defendant.

18 9. Each resident is assigned a Faculty Advisor.

19 10. The Faculty Advisor's role is to collect feedback and discuss it with
20 the resident.

1 11. A resident may request a change of Faculty Advisor once a year if
2 there are conflicts or discomfort in the relationship.

3 12. Plaintiff was assigned Dr. Caitlin Hill as a Faculty Advisor.

4 13. “Residents are subject to continuous performance evaluation, with
5 regard to the six core competencies: patient care, medical knowledge, practice-
6 based learning and improvement, interpersonal and communication skills,
7 professionalism, [and] systems-based practice.”

8 14. The number-one goal of the CHCW resident evaluation system is to
9 “[a]ssure the safety of patients.”

10 15. There are three levels of advancement in the CHCW residency
11 program: R1, R2, and R3.

12 16. “For advancement to the next level [e.g., R1 to R2], acceptable
13 progress meeting milestones in the seven core competencies needs to be
14 documented. Additionally, the Resident must be judged competent to supervise
15 others (R1’s and students), and to act with limited independence.”

16 17. On September 17, 2018, Nurse Joy Gay reported to Dr. Hill,
17 Plaintiff’s advisor, several concerns about Plaintiff, including that he asked her to
18 accompany him to an exam “to make sure he was doing it right,” instead of asking
19 his attending doctor for help, that he asked about discharging a mother to be with
20 her baby without knowing facts about the mother or baby; and that he “was unsafe

1 in the state of fatigue and frustration he was in.”

2 18. On October 1, 2018, Dr. Tiffany Mark reported her concerns about
3 Plaintiff to his Faculty Advisor Dr. Hill, including that he showed up for rounds
4 late and not dressed appropriately, he did not complete his notes despite Mark
5 “spen[ding] hours with him on making sure he understood the work flows,” and
6 he failed to complete a physical exam on a patient because the patient was
7 sleeping, which Mark reported was “incredibly concerning.”

8 19. CHCW’s Committee Addressing Residents Experiencing Difficulty
9 (CARED) was formed to help residents who were struggling in the program.

10 20. In or around 2018, Plaintiff informed Dr. Hill that he was struggling
11 with the Electronic Medical Record (EMR) system “and that’s when I told her I
12 have ADHD, and this can make it a little more difficult.”

13 21. Plaintiff did not ask for any “specific” accommodations at the time.

14 22. Plaintiff told Dr. Hill about his ADHD “in the context of I need help
15 just making [the EMR system] do what I needed it to do.”

16 23. Dr. Hill also arranged for Plaintiff to get extra help with the EMR
17 system from senior residents, including Dom Nguyen, Tess Ish-Shalom, and
18 Tiffany Mark. Dr. Hill also worked with Plaintiff to help him learn the EMR
19 system, and she offered him additional training, which he rejected.

20 24. Plaintiff later sought help from senior residents on the EMR systems

1 “and figured it [the EMR system] out on my own.”

2 25. Plaintiff did not ask Drs. Miller, Pearson, and McCloud for any job
3 modifications because of the ADHD.

4 26. Plaintiff never asked Program Directors Dr. Russell Meier or Dr.
5 Micahlyn Powers or HR Director Laura McClintock for any accommodations
6 related to his ADHD.

7 27. On October 23, 2018, CARED discussed Plaintiff’s performance.

8 28. The committee reviewed both positive and negative feedback about
9 Plaintiff’s performance.

10 29. CARED considered that both Dr. Katina Rue and Dr. MacLeod
11 expressed concerns about Plaintiff’s medical knowledge.

12 30. CARED recommended placing Plaintiff on the first stage of the
13 citation process—a constructive citation.

14 31. Plaintiff received a Constructive Citation on October 23, 2018.

15 32. CARED recommended “[t]asking [Plaintiff] to find a system that
16 works for him in order to keep him organized.”

17 33. CARED also recommended asking Dr. Mark Bauman shadow
18 Plaintiff because of concerns about Plaintiff’s interactions with patients.

19 34. On October 31, 2018, Dr. Bauman shadowed Plaintiff for more than
20 two hours.

1 35. Dr. Bauman reported back to Hill and others concerns he had with
2 Plaintiff's performance.

3 36. On November 14, 2018, Dr. Carlin Miller, an attending physician,
4 reported serious concerns about Plaintiff's performance to his advisor Dr. Hill,
5 including: (i) on the last day of the OB rotation, Plaintiff told Dr. Miller that he
6 still did not know how to do many things he should have known how to do at that
7 point; (ii) Plaintiff "showed a significant lack of ability to triage his day and get
8 things done in a timely manner"; (iii) it took Plaintiff a significant amount of time
9 to discharge two patients despite there being "very little to do to make it happen";
10 (iv) Plaintiff "frequently ask[ed] questions that he should have known the answers
11 to or should have known where to get the information"; (v) Plaintiff failed to
12 complete physical exams on 6-8 patients despite seeing them in rounds.

13 37. Dr. Miller reported to Dr. Hill that "[i]n general there was a complete
14 lack of insight that he was performing well below expected level. I spent nearly
15 the entire shift there, as long as we had anything active going on, because I did
16 not feel good about leaving the floor and him alone to manage it."

17 38. To safely treat patients, it is crucial that doctors be able to self-
18 diagnose their own weaknesses and knowledge gaps so that they are able to
19 educate themselves or seek help when necessary.

20 39. On January 23, 2019, CARED met to discuss Plaintiff's progress.

1 40. On January 24, 2019 , Dr. Powers and Dr. Hill met with Plaintiff and
2 placed him on a Consequential Citation, which indicates “areas of concern
3 significant enough to require the Resident and faculty to develop a formal plan of
4 corrective action.”

5 41. The primary reasons for the Consequential Citation were concerns
6 about professionalism; lack of medical knowledge; concerns for patient safety and
7 decision making; and inappropriate interactions with female faculty, staff, and
8 peers.

9 42. CARED’s concerns about Plaintiff’s professionalism was based in
10 part on:

- 11 a. Plaintiff’s failure to complete required administrative tasks, such as
12 logging didactic attendance, procedure loggings, and CKSAs [clinical
13 knowledge, skills, and abilities];
- 14 b. Plaintiff’s failure to notify BHC that he was running late to a shadowing
15 opportunity;
- 16 c. Plaintiff’s lack of preparation for working the clinic and knowledge of
17 patients’ medical conditions before their visits;
- 18 d. Plaintiff’s inability to stay on time in the clinic and failure to
19 communicate with his preceptors, patients, and nursing team.

20 43. CARED’s concern about Plaintiff’s lack of medical knowledge was

1 based in part on:

2 a. Plaintiff's failure to consistently take accurate patient histories, perform
3 physical exams, and develop a basis for differential diagnosis and plan
4 for outpatients and inpatients in both clinic and hospital settings.

5 b. Plaintiff's failure to ask for supervision by appropriate attending
6 physicians when needed, and instead asking for nursing supervision.

7 44. CARED's concerns for patient safety and decision making was based
8 in part on:

9 a. Plaintiff's documentation of an after-hours call from a patient with
10 chest pain and heart palpitations did not include that she should call 911
11 instead of driving herself to the hospital.

12 b. Plaintiff documented that he performed a physical exam without
13 actually performing the exam, which Powers noted was fraudulent.

14 45. Plaintiff's inappropriate interactions with female faculty, staff, and
15 peers, included that Plaintiff was overly familiar with women, called them "love,"
16 and commented on their physical appearance.

17 46. The Consequential Citation required Plaintiff to follow an action
18 plan, which included: (1) timely responding to messages, refill requests, and labs;
19 (2) arriving on time for clinic, shadow experiences, meetings, shifts, and rotations;
20 (3) completing didactic attendance logging, CKSA, and procedure logging by

1 February 21, 2019; (4) arriving at the family medicine clinic by 8 a.m. having
2 chart-prepped the night before; (5) being shadowed in the clinic by a faculty
3 member for the next month; (6) be evaluated by the Washington Physician Health
4 Program (WPHP) “to determine your fitness to practice in residency;” (7) make
5 up his failed Family Medicine rotation; (8) working closely with preceptors to
6 diagnose clinic patients; (9) contacting the Employee Assistance Program (EAP)
7 for help with the stress of residency; (10) receiving additional training on the
8 computer systems, and being excused from clinical duties to complete this
9 training; and (11) receiving additional shadowing and mentoring to help with
10 workflows and efficiency.

11 47. During the meeting to discuss this Consequential Citation and action
12 plan, Plaintiff did not raise that he had ADHD, an anxiety disorder, or any
13 impairment or that he needed an accommodation to perform his essential job
14 functions.

15 48. On February 4, 2019, Dr. Patrick Moran reported an incident that
16 occurred in September 2018. At an appointment for a transvaginal ultrasound
17 exam, the patient had her feet in stirrups with a sheet covering her legs. Before
18 the appointment, Dr. Moran had asked Plaintiff to stand by the wall and simply
19 observe the procedure on a screen, but in the exam, Plaintiff walked up to the
20 patient without being asked and pulled the sheet up over her knees. Dr. Moran

1 reported that this was highly inappropriate behavior and that it caused the patient
2 to feel uncomfortable.

3 49. Dr. Moran also reported to Hill that Plaintiff,
4 “had not prepared at all in terms of knowing which studies his patients
5 needed, what the indications were nor what elements of the studies were.
6 This is atypical, as the residents have several resources spelled out for
7 them—including the survival guide, which just happened to contain
8 virtually all of the information he needed to be successful on that day.”

9 50. During Plaintiff’s second Family Medical Service (FMS) rotation,
10 CHCW assigned Dom Nguyen, a senior resident, to work with Plaintiff to help
11 him identify where he was struggling and how to improve those areas.

12 51. Plaintiff believed Nguyen made up his mind about Plaintiff too
13 quickly and was not helpful.

14 52. Plaintiff responded by avoiding Nguyen and told Nguyen “you are
15 not helping me.”

16 53. Dr. Nguyen responded by trying to help Plaintiff.

17 54. Dr. Nguyen also provided feedback to the CARED committee after
18 shadowing Plaintiff for three half days. Nguyen reported serious concerns with
19 Plaintiff’s poor insight into what was causing his performance issues; poor
20 medical knowledge; inattention to detail; not following Nguyen’s coaching and
21 suggestions to improve his performance; and not doing the work necessary to
22 improve his performance, i.e., being lazy.

1 55. On February 13, 2019, Dr. Ragina Lancaster provided Dr. Hill
2 feedback about Plaintiff. She expressed serious concerns about Plaintiff's (1)
3 communications with patients, patients' family, social workers, and other staff
4 and (2) medical knowledge, providing examples supporting each concern.

5 56. That day CARED reviewed feedback about Plaintiff from Carlin
6 Miller, Hill, and Rue in addition to the feedback from Nguyen.

7 57. In Dr. Rue's feedback, she stated "I agree with Carlin [Miller] that
8 [Plaintiff] is a detriment to the team and is a risk as far as patient safety. I do not
9 feel comfortable with him communicating accurate information to me, to
10 consultants, nursing staff or families. This potentially [a]ffects patient care in a
11 negative way. I would urge [yo]u to remove him from the service [i.e., the
12 hospital]."

13 58. On February 13, 2019, after reviewing and discussing the feedback,
14 CARED moved Plaintiff to the next step of the remediation plan: Probation.

15 59. Plaintiff was placed on Probation on February 13, 2019.

16 60. As part of the "action plan" accompanying the Probation, CHCW
17 provided Plaintiff with help for the EMR system: "You will be shadowed in your
18 family medicine clinic by a faculty member in the next 1 mo, *with special*
19 *attention paid to EMR efficiency.*"

20 61. CARED also noted that Plaintiff had been offered additional

1 trainings on the EMR system, which he had refused.

2 62. On February 13, 2019, That afternoon, Dr. Powers emailed all
3 CHCW faculty to inform them of changes to Plaintiff's curriculum. Plaintiff
4 would no longer participate in the Family Medicine Service (FMS); instead, he
5 was to perform extra clinic shifts. Dr Powers also notified faculty that Plaintiff
6 must precept all patients with an attending doctor and that "the attending MUST
7 see every patient, and likely repeat the Hx [history], PE [physical examination],
8 and confirm the A&P [assessment and plan]."

9 63. On February 15, 2019, Laura Moss, WPHP Associate Medical
10 Director, notified Dr. Powers via email that Plaintiff "attended his scheduled
11 appointment with the (WPHP)...Based on this meeting with Dr. Plaintiff there
12 was no evidence of current impairment."

13 64. Dr. Moss's email also stated that Plaintiff would be "undergoing
14 additional evaluation from an outside provider to rule out an underlying medical
15 condition that could affect his ability to practice with reasonable safety to
16 patients."

17 65. On February 26, 2019, CARED met and discussed Plaintiff's
18 progress. CARED noted that Plaintiff had made progress with respect to
19 responding to messages, appropriate behavior with the nursing staff, and his
20 clinical case studies. Nonetheless, CARED noted there were still areas that

1 needed to improve.

2 66. On February 27, 2019, , CARED provided its feedback and plan to
3 Plaintiff. The plan stated that Plaintiff would begin another FMS rotation on April
4 1, 2019, and “You must pass this rotation in order to continue your residency
5 training.

6 67. After receiving the feedback and plan, Plaintiff did not raise any
7 concerns about a medical or mental health impairment or request any
8 accommodations.

9 68. On April 17, 2019, CARED met to discuss Plaintiff’s progress.
10 CARED noted that Plaintiff’s “Patient presentations continue to be scattered,
11 disorganized. Sometimes able to answer attending questions but seems to lack
12 common sense in ability to approach a patient case...Misses critical information
13 in H&P, differential diagnoses are shallow, and despite writing 2 cases about
14 sepsis criteria he could not identify that a COPD patient met criteria for sepsis.”

15 69. CARED further noted that Plaintiff was not reviewing at least one
16 evidence-based article related to his patients’ condition despite being required and
17 reminded to do so.

18 70. Nursing staff at Virginia Mason Hospital stated that Plaintiff “still
19 put in orders for blood draw, after this was already discussed and the plans were
20 to not do any lab draws. This upset the family and nursing staff.”

1 71. Nora Kirschner provided feedback that Plaintiff's "knowledge is
2 below that of a medical student. Doesn't know acid base disorders or where to
3 look up about them."

4 72. Based on this feedback and discussion, CARED concluded that it had
5 "Ongoing grave concerns about decision making, organizational skills,
6 comprehension, and ability to complete tasks on time and follow a plan...If he
7 does not pass his FMS rotation, he will be discharged from the program."

8 73. After the meeting, Dr. Powers emailed the FMS attending doctors
9 and asked them "when you work with R1 Demetrios Plaintiff in the next few
10 weeks on FMS, that you think very hard about whether he is meeting expectations
11 or not, as compared to other R1 residents. His final evaluations are very important
12 in assessing his progress."

13 74. On April 18, 2019, via email, Dr. Powers asked Cynthia Morales,
14 WPHP Clinical Coordinator, for an update on Dr. Plaintiff's evaluation.

15 75. The next day, Morales responded via email that "[b]ased on this
16 evaluation, there was no current identified impairment due to an underlying
17 medical condition."

18 76. Morales continued: "[w]e are recommending to [Plaintiff]
19 enrollment in monitoring with our organization in order to monitor underlying
20 medical conditions. We want to monitor these conditions in order to prevent

1 future impairment.”

2 77. Morales stated “[w]e emphasize to all residency programs and
3 employers that they may continue their own disciplinary processes in tandem with
4 our own.”

5 78. Morales did not identify any specific medical conditions or
6 reasonable accommodations.

7 79. On April 23, 2019, Dr. Midhuna Papazian provided feedback to Dr.
8 Powers. Dr. Papazian did rounds with Plaintiff to observe him with a patient and
9 assess how he was doing. Dr. Papazian reported that “[p]rior to my rounding with
10 him, we sat down and talked about the things we would ask the patient and he kept
11 missing the main points during the interview.” She continued “I have rounded on
12 patients after [Plaintiff] has seen them and they seem confused about the
13 information that he shares with them. I don’t feel like it’s the right thing for patient
14 care for him to round on patients by himself.”

15 80. Papazian concluded: “I know we all want Demetrios to succeed but
16 I really don’t see how he is going to practice medicine successfully.”

17 81. Plaintiff agrees that he failed to pass his FMS rotation during the
18 block beginning on October 15, 2018.

19 82. Plaintiff agrees that he failed to pass the FMS rotation for a second
20 time during the block beginning on February 4, 2019.

1 83. Plaintiff agrees that he failed to pass the FMS rotation for a third time
2 during the block beginning on April 1, 2019. Team up

3 84. Powers observed Plaintiff and noted that among the list of his
4 greatest difficulties was “he had difficulty synthesizing information, he had
5 difficulty making an assessment that was accurate, and he had difficulty making
6 a plan to manage the medical conditions and with counseling patients as far as
7 explaining what the plan and options are.”

8 85. On April 24, 2019, CARED met to discuss Plaintiff’s progress and
9 determined that terminating his residency employment was necessary.

10 86. As the Program Director, Dr. Powers was the final decision-maker
11 for Plaintiff’s termination.

12 87. On April 26, 2019, Dr. Ravneet Dhaliwal, CHCW attending doctor,
13 provided feedback about Plaintiff’s progress, including that Plaintiff “[l]acks
14 basic skills” and her “[c]oncern for patient safety with appropriate transfer of
15 care.”

16 88. On May 1, 2019, Plaintiff was informed of his termination from the
17 CHCW residency program.

18 89. Plaintiff was paid his entire salary under the contract for 30 days after
19 his termination.

20 90. Plaintiff’s termination notice provided a grievance procedure.

1 91. Plaintiff did not grieve his termination.

2 92. On May 7, 2019, Plaintiff first learned of his diagnosis with
3 Generalized Anxiety Disorder (GAD).

4 93. On May 8, 2019, Plaintiff shared the GAD diagnosis with Dr.
5 Powers.

6 94. That same day, Plaintiff shared that he believed his GAD prevented
7 him from displaying his medical knowledge.

8 95. In the same email, Plaintiff made no mention of his ADHD.

9 96. Plaintiff asked Dr. Powers to allow him to retake an EKG exam that
10 he had failed.

11 97. Dr. Powers allowed him to retake the exam.

12 **IV. ISSUES OF FACT**

13 The following are the issues of fact to be determined by trial:

14 1. Was Plaintiff “disabled” under the ADA during his employment with
15 CHCW?

16 2. Was Plaintiff “disabled” under the WLAD during his employment
17 with CHCW?

18 3. Did CHCW have notice of Dr. Plaintiff’ alleged disability before it
19 terminated his employment as a first-year resident?

1 4. Did Plaintiff give CHCW notice of his disability and desire for a
2 reasonable accommodation?

3 5. Did Defendant retaliate against Plaintiff?

4 6. Was Dr. Plaintiff's disability a substantial factor in CHCW's decision
5 to terminate his employment?

6 7. Did CHCW and Dr. Plaintiff enter into an employment contract for a
7 fixed term?

8 8. Did CHCW materially breach a contract with Dr. Plaintiff by ending
9 his employment before June 24, 2019?

10 9. Did Dr. Plaintiff unreasonably fail to take advantage of work
11 opportunities available to him after he was terminated?

12 10. Did CHCW act maliciously, oppressively, or in reckless disregard of
13 Dr. Plaintiff's rights when it discharged him or allegedly failed to accommodate
14 him, such that punitive damages are appropriate?

15 11. What amount of compensatory damages is Dr. Plaintiff owed under
16 the WLAD or ADA?

17 12. What amount of punitive damages, if any, is Dr. Plaintiff owed under
18 the ADA?

19 17. If CHCW materially breached Plaintiff's contract, what are his
20 contract damages?

V. ISSUES OF LAW

The following are the issues of law to be determined by the Court:

1. Is Dr. Vorgias entitled to reinstatement or front pay in lieu of?
2. What is the correct measure of front pay (ADA)? *Pollard v. E.I. du Pont de Nemours & Co.*, 532 U.S. 843, 846 (2001).
3. Is Dr. Vorgias entitled to back pay?
4. If awarded by the jury, the correct amount of punitive damages and/or compensatory in light of the cap under 42 U.S.C. § 1981a(b) (ADA claims only)?

VI. EXHIBITS

The following exhibits may be received in evidence, if otherwise admissible, without further authentication, once determined that each is what it purports to be:

PLAINTIFF'S EXHIBITS

Ex No.	Description	Bates No.	Admit	Auth. Admitted	Admiss. Disputed
1.	CWFM Residency Program Resident Handbook	Not Provided; Produced as ECF No. 71-1	Pre-Admit	Y	
2.	CWFM "resident Contract in Family Medicine."	Not Provided; Produced as ECF No. 71-2	Pre-Admit (formerly 205)	Y	

Ex No.	Description	Bates No.	Admit	Auth. Admitted	Admiss. Disputed
3.	CWFM Residency Verification of Graduate Medical Education & Training	Not Provided; Produced as ECF No. 71-3	Pre-Admit	Y	
4.	December 11, 2019 letter from Dr. Moss, MD and C. Morales, (WPHP)	Not Provided; Previously produced as ECF No. 71-4		Y	FRE 802; 602; 701. <i>See</i> ECF No. 99 at 5-6 and ECF No. 110 at 1-3.
5.	April 19, 2019 email from C. Morales to Dr. Powers	Not Provided; Produced as ECF No. 71-5	Pre-Admit (formerly 235)	Y	
6.	Undated Letter from Dr. Kelly Cornett	Not Provided; Produced as ECF No. 71-6		N	FRE 402, 403, 802, 901.
7.	Plaintiff Demetrios Plaintiff's Supplemental Initial Disclosure re: Damages	Not Provided; Previously produced as ECF No. 71-7		Y	FRE 602; 702, 703, 802; 1002

Ex No.	Description	Bates No.	Admit	Auth. Admitted	Admiss. Disputed
8.	Plaintiff's FRCP 26 Initial Expert Witness Disclosure & Report of Dr. Scott Whitmer	Not Provided; Previously produced as ECF No. 71-8		Y	FRE 702, 703, 802. See ECF No. 70; No. 99 at 13-15; No. 110 at 8
9.	Seven Letters of Recommendation	Not Provided; Previously produced as ECF No. 71-9		N	FRE 402, 403, 702, 703, 802. ECF No. 70. See ECF No. 99 at 8; ECF No. 110 at 4-5.
10.	Medical Residency Jobs Plaintiff Applied to via Medical Residency Portal	Not Provided; Produced as ECF No. 71-10		Y	FRE 802.
11.	St. George's University Medical Student Performance Evaluation	Not Provided; Produced as ECF No. 71-11		N	FRE 402, 403, 802, 901.
12.	ACGME Institutional Requirements	Not Provided; Produced as ECF No. 71-12		N	FRE 403, 802, 901.

Ex No.	Description	Bates No.	Admit	Auth. Admitted	Admiss. Disputed
13.	ACGME Program Requirements for Graduate Medical Education in Family Medicine	Not Provided		N	FRE 403, 802, 901.

DEFENDANT'S EXHIBITS

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
200.	2016 Resident Handbook	CHCW 000001-10		N	FRE 403; Relevance; Foundation
201.	ACGME Program Requirements	CHCW 000011-20		N	FRE 403; Relevance; Foundation; Incomplete
202.	Resident Professionalism Agreement and Accountability Policy (4/22/18)	CHCW 000258-259		N	FRE 802 – Hearsay; FRE 403; Relevance; Foundation
203.	Standards of Behavior Agreement (6/27/18)	CHCW 000189		N	FRE 802 – Hearsay; FRE 403; Relevance; Foundation
204.	10/1/2017 Plaintiff Residency Application materials	CHCW 000228-243; 255-257		N	

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
205.	R 1 FMS Evaluation	CHCW 000126-135		N	FRE 802 – Hearsay
206.	EKG Selective Evaluation	CHCW 000162		N	FRE 802 – Hearsay
207.	Resident Individual Learning Plan	CHCW 0000146-156		N	FRE 802 – Hearsay
208.	7/19/2018 Self Evaluation	CHCW 000097-98		N	FRE 802 – Hearsay
209.	9/17/18 Email from J. Gay	CHCW 000044		N	FRE 802 – Hearsay; FRE 403; Misleading
210.	10/1/2018 Email from T. Mark	CHCW 000045-46		N	FRE 802 – Hearsay; FRE 403; Misleading
211.	Resident Individual Learning Plan	CHCW 000047-50		N	Relevance
212.	CARED Committee Description	PLAINT IFF 00039-45		N	FRE 802 – Hearsay; FRE 403; Misleading
213.	10/23/2018 CARED Meeting re Constructive Citation	CHCW 000051-52		N	FRE 802 – Hearsay; FRE 403; Misleading
214.	10/23/2018 New Innovations Evaluation by Dr. Hill	PLAINT IFF 000080-83		N	FRE 802 – Hearsay; FRE 403; Misleading

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
215.	10/24/2018 Quarterly Review / Constructive Citation	CHCW 000102-103		N	FRE 802 – Hearsay
216.	11/4/2018 Email from Dr. Bauman	CHCW 000055-56		N	FRE 802 – Hearsay
217.	November 14, 2018 Email from Dr. Miller	CHCW 000053-54		N	FRE 802 – Hearsay
218.	2018-2019 Rotation Comparison	CHCW 000184-186		N	FRE 802 – Hearsay; FRE 403; Misleading
219.	2018 American Board of Family Medicine In Training Examination Performance Report	CHCW 000167		N	FRE 802 – Hearsay; Foundation; Misleading
220.	1/23/2019 Consequential Citation by CARED Committee	CHCW 000058-60		N	FRE 802 – Hearsay; FRE 403; Misleading
221.	1/23/2019 Quarterly Review	CHCW 000163-164		N	FRE 802 – Hearsay; FRE 403; Misleading

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
222.	1/28/2019 Email from Dr. Hill to faculty re Consequential Citation	CHCW 000057		N	FRE 802 – Hearsay; FRE 403; Misleading; Prejudicial
223.	2/4/2019 Email from Dr. Moran	CHCW 000061- 62		N	FRE 802 – Hearsay; FRE 403; Misleading; Prejudicial
224.	2/10/2019 New Innovations Review by Dr. Rue	PLAINT IFF 000210- 213		N	FRE 802 – Hearsay; FRE 403; Misleading; Prejudicial
225.	2/13/2019 Pre-reading for CARED Meeting	CHCW 000066- 71		N	FRE 802 – Hearsay; FRE 403; Misleading
226.	2/13/2019 CARED Meeting regarding probation	CHCW 000072- 75		N	FRE 802 – Hearsay; FRE 403; Misleading
227.	CARED to Dr. Plaintiff/Prob ation	CHCW 000091- 94		N	FRE 802 – Hearsay; FRE 403; Misleading
228.	2/13/2019 Email from Dr. Lancaster	CHCW 000064- 65		N	FRE 802 – Hearsay; FRE 403; Misleading
229.	2/13/2019 Email from Dr. Powers	CHCW 000076		N	FRE 802 – Hearsay; FRE 403; Misleading

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
230.	2/15/2019 Letter from Dr. Moss to Dr. Powers	CHCW 000077		N	FRE 802 – Hearsay
231.	2/26/2019 CARED Meeting regarding remaining on Probation	CHCW 000165- 166		N	FRE 802 – Hearsay; FRE 403; Misleading
232.	March 2019 “Clinical Question” emails with Dr. Powers	CHCW 000206- 227		N	FRE 802 – Hearsay; FRE 403; Misleading
233.	4/17/ 2019 CARED Meeting re Probation	CHCW 000078- 79		N	FRE 802 – Hearsay; FRE 403; Misleading
234.	4/23/2019 Emails re “Vorgias FMS Evaluations”	CHCW 000084		N	FRE 802 – Hearsay; FRE 403; Misleading
235.	4/23/2019 Email from Dr. Papazian	CHCW 000080		N	FRE 802 – Hearsay; FRE 403; Misleading
236.	4/24/2019 CARED Meeting re termination	CHCW 000087- 88		N	FRE 802 – Hearsay; FRE 403; Misleading
237.	4/24/2019 Quarterly Review	CHCW 000089- 92		N	FRE 802 – Hearsay; FRE 403; Misleading; Foundation

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
238.	4/26/2019 Email from Dr. Dhaliwal	CHCW 000085-86		N	FRE 802 – Hearsay
239.	5/1/2019 “On the Fly Resident Evaluation” by Dr. Dhaliwal	VORGI AS 000186		N	FRE 802 – Hearsay; FRE 403; Misleading; Foundation
240.	5/8/2019 Email from Dr. Powers to Plaintiff	CHCW 000095-96		N	FRE 802 – Hearsay
241.	List of jobs Plaintiff applied to after separation of employment	PLTF 001155		N	FRE 403; Incomplete
242.	2017 Resume	CHCW 000261		N	
243.	2021 Resume	PLTF 000145-147		N	
244.	November 3, 2020 EEOC Dismissal Notice	VORGI AS 000254-255		N	FRE 802 - Hearsay; FRE 403; Misleading; Foundation
245.	Shelly Lewis, MA, CRC, CLCP, ABVE/D CV Expert Report dated November 4, 2021	11/5/, 2021		N	FRE 802 – Hearsay; Relevance

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
246.	Shelly Lewis, MA, CRC, CLCP, ABOVE/D CV	11/5/2021		N	FRE 802 – Hearsay; Relevance

Other than for impeachment purposes, the only exhibits admitted at trial will be exhibits identified herein or on a supplemental list filed at least 14 days before trial, or at such earlier date as may have been set by the Court, which supplemental list shall bear counsel's certificate that opposing counsel has had an opportunity to examine the exhibits.

Objections to exhibits, except as to relevancy, must be heard prior to trial.

VII. WITNESSES

A. Plaintiff's Witnesses:

1. Demetrios Plaintiff
2. Rebecca Ward
3. Kelly Cornett
4. Tess-Ish-Shalom
5. Mark Bauer
6. Ed Prasthofer
7. Douglas E. Coon
8. Judith Harvey

1 9. Caitlin C.D. Hill

2 10. Carlin Miller

3 11. Cynthia Morales

4 12. Scott Whitmer

5 13. Ben E. Kitchens

6 14. Sagar Vijapura

7 15. Brandon Isaacs

8 **B. Defendant's Witnesses:**

9 1. Demetrios Plaintiff

10 2. Michalyn Powers

11 3. Katina Rue

12 4. Caitlin Hill

13 5. David Bauman

14 6. Ragina Lancaster

15 7. Laura McClintock

16 8. Carlin Miller

17 9. Patrick Moran

18 10. Dominick Nguyen

19 11. Ravneet Dhaliwal

20 12. Shelley Lewis

1 Other than for rebuttal purposes, no witness may be called unless listed
2 above.

3 **VIII. RELIEF SOUGHT**

4 Injunctive relief, including reinstatement of Dr. Vorgias to the residency
5 program at Community Health of Central Washington and/or monetary damages
6 for unlawful discrimination, attorney fees, costs, and punitive damages.

7 **IX. TRIAL**

8 The parties estimate seven (7) days trial time. The parties stipulate and agree
9 to the following: No stipulation reached by the parties. Proposed instructions and
10 trial memoranda shall be filed in accordance with the court's scheduling order. *See*
11 ECF No. 89 and ECF No. 113.

12 **X. ACTION BY THE COURT**

13 The Court has made the following rulings:

14 1. The Court granted Defendant's motion to exclude portions of
15 Plaintiff's expert's testimony and report. *See* ECF No. 70. The Court denied
16 Defendant's request for an expert examination. *See* ECF No. 68.

17 2. The Court denied cross-motions for summary judgment filed by both
18 parties as to all claims. ECF No. 69. The Court also denied reconsideration. ECF
19 No. 87.

3. [motions in limine]

4.

5.

It is ORDERED that the foregoing constitutes the pretrial order in the case and that upon the filing hereof all pleadings pass out of the case and are superseded by this Order. This Order may be amended by consent of the parties and approval by the Court or by the Court to prevent manifest injustice.

ENTERED this _____ day of _____ 2022.

The Honorable Stanley A. Bastian

PRESENTED BY:

FISHER PHILLIPS LLP
By: *s/ Catharine Morisset*
Catharine M. Morisset,
WSBA #29682
Suzanne Michael, WSBA #14072
Clarence Belnavis, WSBA #36681
1700 7th Avenue, Suite 2200
Seattle, WA 98101
Phone: (206) 682-2308
Fax: (206) 682-7908
cmorisset@fisherphillips.com

LARSON | GRIFFEE | PICKETT,
PLLC
By: *s/William Pickett*
William D. Pickett, WSBA #27867
105 N. Third Street
Yakima, Washington 98901
Tel: 509-972-1825
bill@lgplawfirm.com
Attorney for Plaintiff

smichael@fisherphillips.com
cbelnavis@fisherphillips.com

Attorneys for Defendants

LAW OFFICES OF LUAN T. LE
By: *s/Luan Le*
Luan T. Le, CSBA #171029
1190 S Bascom Avenue, Suite 213
San Jose, CA 95128
Email: ledowningllp@gmail.com
Attorney for Plaintiff – Pro Hac Vice

LAW OFFICES OF SETH W.
WIENER
By: *s/Seth W. Wiener*
Seth W. Wiener, CSBA #203747
609 Karina Court
San Ramon, CA 94582
Email: sethwiener@yahoo.com
Attorney for Plaintiff – Pro Hac Vice

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the date below written, I electronically filed the
3 foregoing with the Clerk of the Court using the CM/ECF system and caused to be
4 served a true and correct copy of same by the method indicated below and
addressed as follows:

5 Luan T. Le, *pro hac vice*
Law Offices of Luan T. Le
6 1190 S Bascom Avenue, Suite 213
San Jose, CA 95128
7 Email: ledowningllp@gmail.com

8 Seth W. Wiener, *pro hac vice*
Law Offices of Seth W. Wiener
9 609 Karina Court
San Ramon, CA 94582
10 Email: sethwiener@yahoo.com

11 William D. Pickett, WSBA #27867
Larson Griffie & Pickett, PLLC
12 105 North 3rd Street
Yakima, WA 98901
13 Phone: 509-972-1825
Fax: 509-457-1027
14 Email: Bill@lgplawfirm.com

15 *Attorneys for Plaintiff*

16 Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury under the
17 laws of the United States of America that the foregoing is true and correct.

18 Executed August 24, 2022, at Portland, Oregon.

19 
20 Alison Roblin